

**GENERAL ADMINISTRATION REQUIREMENTS**

1. **General Responsibility.** It is the prerogative and responsibility of the State, and the project sponsor to which the State delegates responsibilities, to prosecute a project under the general guides and rules established by the State, governed in general by the concepts, rules and guides set forth in this Manual. The primary role of the Service in project administration is to be concerned with results, leaving to the States the determination of means to achieve these results. Thus, the rules established in this Part are minimal, being limited to those considered necessary for the Service to fulfill its obligations.
2. **Arrangements with Sponsors.** It is the responsibility of the State to make suitable and adequate arrangements with other public agencies to insure the successful performance of projects and the continued operation and maintenance of aided facilities and properties for public outdoor recreational use. The State shall be held responsible for all the actions of project sponsors relating to the execution of projects.
3. **Consideration of Federal Acts.** During preparation of an application and conduct of a project, the sponsor shall comply with applicable Federal laws and regulations relating to the acquisition and development of public properties.
4. **Duration of Project.** A project will continue in force until all work under a grant is completed or until the project period of the approved project agreement and all amendments thereto have expired.
5. **Prosecution of Project Work.** The State shall be responsible for insuring that all projects receiving financial assistance pursuant to the Act are carried through to stages of completion acceptable to the Director with reasonable promptness. Failure to maintain satisfactory progress or failure to complete the project to the satisfaction of the Director may be cause for the Director to withhold further payments on any or all projects of a State or qualification of new projects until the project provisions are satisfactorily met. L&WCF assistance may be terminated upon determination by the Director that satisfactory progress has not been maintained.

In the event that L&WCF assistance should be terminated, the State shall be required to bring the project to a state of usefulness so funds invested shall not be lost. If the State cannot complete the project with its own funds, it should submit a plan to the Director for bringing the incomplete project to a point where it is useful. The Director will not require that all parts of a project be completed in such a case if a stage of reasonable usefulness can be achieved short of completion.

**6. On-Site Inspections by the State.**

- A. Responsibilities. It is the responsibility of the State to administer a regular and continuing program of on-site inspections of projects. The scope, timing and selectivity of these inspections will be covered in an agreement to be negotiated by the Regional Director and the State. This agreement will provide the basis for the conduct of pre-award, progress and final on-site inspections as well as the associated reporting formats (reporting authority approved by OMB No. 1024-0034, 09/30/84). Post-completion inspection requirements are contained in Chapter 675.9.7. Properties and facilities acquired or developed with L&WCF assistance shall be available for inspection by the Service at such intervals as the Director shall require. Generally, Service inspections will be conducted on a spot check basis in conjunction with the State Program Review.
- B. Reports. On-site inspection reports will be prepared on all inspections conducted and will be included in the official project files maintained by the State. The State is responsible for the preparation of these reports except when joint-inspections are conducted with the Service.

Submission of inspection reports to the Service will be made on the following basis:

- (1) Pre-award reports in accord with the on-site inspection agreement will be included with the Complete Single Project application type.
  - (2) Progress reports may be combined with the annual performance report on March 31 or submitted to the Service with the project billings or drawdown (see Section 675.5.5).
  - (3) Final inspection reports must be submitted to the Region within 90 days after the date of completing a project or consolidated project element.
  - (4) Post-completion reports must be submitted to the Region within five years after the final billing and every five years, thereafter.
7. **Changes in Project Scope.** See Section 660.2.7A for discussion of changes in project scope.
8. **Income from Properties Acquired or Developed with L&WCF Assistance.**

A. During Project Period. In accord with OMB Circular A-102 Common Rule-43 CFR 12, income earned by the project sponsor during the project period from sources other than the intended recreational use of the project shall be dispersed in one of the following ways:

- (1) Added to the funds committed to the project and used to further eligible program objectives at the project site. In this case a plan for the use of such monies shall be forwarded to the Service for concurrence.
- (2) Deducted from the total project costs for the purpose of determining the net cost on which the Federal share of the costs will be based. In this instance, requests for payments must include identification of accrued amounts as credits to the project.

Examples of income that shall be dispersed in the above manners include the rental of structures, the sale of timber and the lease or rental of land.

Income earned by the project sponsor during the project period from the intended recreational use of the project, such as entrance or used fees and concessionaire operations may be disposed of at the sponsor's discretion. The sponsor however, is encouraged to use such income to further recreation objectives related to the sponsor's public outdoor recreation program.

B. After the Project Period. Income earned by the project sponsors after the project period, including that from recreational use and that from land management practices, may be disposed of at the sponsor's discretion. However, the sponsor is encouraged to use such income to further recreation objectives related to the facility when State and local laws allow. Exceptions include those identified under paragraphs D and E below.

C. Land Management Practices. Land management practices such as the rental of structures, the sale of timber and the lease or rental of land occurring during or after the project period must be compatible with the outdoor recreational use of the area as described to the Service. Any practice that alters the use or purpose of the area is prohibited except as provided in Section 675.9.3. Income from such land management practices must be dispersed in accord with paragraphs A and B above.

- D. Sale of Improvements or Structures. Income derived from the sale of improvements or structures acquired with L&WCF assistance shall be used to reduce the cost of other L&WCF-assisted projects of the project sponsor regardless of whether the sale occurs during or after the project period. If the sponsor has no plans for further L&WCF-assisted facilities then the income must be used to further outdoor recreation development or acquisition at the site, at another L&WCF-assisted site, or at another outdoor recreation site operated by the project sponsor. In this case, a letter indicating the intended use of the funds shall be sent to the Service for approval.
- E. Non-destructive Mineral Extraction. Extraction of oil and gas from L&WCF-assisted projects involving the purchase of subsurface rights is allowable and will not constitute a conversion under Section 6(f)(3) of the L&WCF Act provided the following conditions are met:
- (1) The extraction process does not reduce the recreation opportunities at the site, nor detract from the recreation experiences.
  - (2) All income derived from the mineral extraction by the project sponsor is used as follows:
    - (a) to further outdoor recreation development or acquisition at the project site or to reduce the total cost of other active L&WCF-assisted projects at the site (to be given priority); or
    - (b) to reduce the total cost of other active L&WCF-assisted projects; or
    - (c) for outdoor recreation acquisition, development, or planning at other State facilities or granted to local communities for such purposes; or
    - (d) for any use that is consistent with an outdoor recreation program, including operation and maintenance costs and any related service or support facilities.
    - (e) Such income may not be used strictly for the development of facilities which do not meet the eligibility guidelines for L&WCF assistance (see Chapter 640.3).
  - (3) The method of allocating income and the uses to which it will be put shall be approved by the Service through a formal agreement with the State.



9. **Title to Properties Acquired or Developed with L&WCF Assistance.** Pursuant to 43 CFR Part 12.31, the Federal Government will not obtain a legal right or title to any area or facility acquired or developed with financial assistance received under the provisions of the Act.
10. **Safety and Accident Prevention.** In the performance of each project the State and other participating organizations shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The State and other participating organizations shall be responsible for assuring that all reasonable safeguards, safety devices, and protective equipment are provided, and will take other needed actions reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of work on the project.
11. **Issuance of Rules and Instructions.** The Director may issue additional or modified rules, instructions, interpretations, and guides from time to time as is necessary for the effective conduct of assistance activities. Such changes will apply to all projects for which agreements are signed after the effective date of the changes. Whenever possible, sufficient lead time will be given between the announcement and the effective date to avoid application to projects already in process at the time of the announcement.
12. **Failure to Comply with Federal Laws and Regulations.** When the Director determines that a State has violated or failed to comply with applicable Federal law, or the regulations governing this program with respect to a project, he/she may withhold payment to the State of Federal funds on account of such project, withhold funds for other projects of the State, withhold approval of further projects of the State, and take such other action deemed appropriate under the circumstances until compliance or remedial action has been accomplished by the State to the satisfaction of the Director.
13. **Appeals.** Disagreements with any decision or action concerning comprehensive plans, project proposals, valuations of properties and personal services, and audit exceptions, which have not been resolved to the satisfaction of the project sponsor may be appealed in the following sequence:
  - A. **Local Project Sponsors.** Disagreements between local project sponsors and the State Liaison Officer or State agreements not represented by the State Liaison Officer may be appealed to the Regional Director and if not resolved to the satisfaction of the sponsor, may be appealed to the Director and ultimately to the Secretary if necessary.

- B. State Liaison Officer. Disagreements between the State Liaison Officer and the Regional Director may be appealed to the Director and if not resolved satisfactorily at that level, may be appealed to the Secretary.
14. Nonprocurement Debarment and Suspension. In accordance with 43 CFR 12.100-.510 (see 675.1, Attachment A) no grant or contract may be awarded by a grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549.

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Debarment and Suspension  
(Nonprocurement)  
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Authority: Executive Order 12549 of February 18, 1988; 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-128; OMB Circular A-102.

**Subpart A - General****§12.100 Purpose.**

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in §12.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

**§12.105 Definitions.**

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate*. Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency*. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment*. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction*. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment*. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official*. An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.
- (3) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(h) *Indictment*. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible*. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility

under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings*. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List*. The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice*. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venture of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant*. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person*. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities

consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators. n1

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil

Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *Exception official.* The official authorized to grant exceptions under §12.215 for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(x) *Findings of fact official.* The official authorized to conduct and prepare findings of fact, if required under §12.314(b)(2) or §12.413(b)(2), is the Director, Office of Hearings and Appeals, or designee.

#### §12.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(viii) Transactions entered into pursuant to Pub. L. 93-638.

(3) *Department of the Interior covered transaction.* These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph

(a)(2) of this section: Grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type of (including subtier awards under awards which are statutory entitlement or mandatory awards).

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," §12.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §12.110(a). Sections 12.325, "Scope of debarment," and 12.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

#### §12.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

#### Subpart B - Effect of Action

#### §12.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to §12.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see §12.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(8) Transactions entered into pursuant to Pub. L. 93-638.

#### §12.205 Ineligible persons.

Persons who are ineligible, as defined in §12.105(i), are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

#### §12.210 Voluntary exclusion.

Persons who accept voluntary exclusions under §12.315 are excluded in accordance with the terms of their settlements. The Department of the Interior shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

#### §12.215 Exception provision.

The Department of the Interior may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §12.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §12.505(a).

#### §12.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in §12.215.

**§12.225 Failure to adhere to restrictions.**

Except as permitted under §12.215 or §12.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the Burden of proof that such participant did knowingly do business with such a person.

**Subpart C - Debarment**

**§12.300 General.**

The debarring official may debar a person for any of the causes in §12.305, using procedures established in §§12.310 through 12.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

**§12.305 Causes for debarment.**

Debarment may be imposed in accordance with the provisions of §§12.300 through 12.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining,

attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in §12.215 or §12.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §12.315 or of any settlement of a debarment or suspension action; or



(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

(5) Violation of any requirement of the drug-free workplace requirements for grants, relating to providing a drug-free workplace, as set forth in §12.615 of this part.

#### §12.310 Procedures.

The Department of the Interior shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§12.311 through 12.314.

#### §12.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

#### §12.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

- (a) That debarment is being considered;
- (b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under §12.305 for proposing debarment;
- (d) Of the provisions of §§12.311 through 12.314, and any other Department of the Interior procedures, if applicable, governing debarment decisionmaking; and
- (e) Of the potential effect of a debarment.

#### §12.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the

respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

#### §12.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

*(d) Notice of debarring official's decision.*

(1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §12.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

**§12.315 Settlement and voluntary exclusion.**

(a) When in the best interest of the Government, the Department of the Interior may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

**§512.320 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of the drug-free workplace requirements for grants of this subpart generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of the drug-free workplace requirements for grants of this subpart (see §12.305(c)(5)), the period of debarment shall not exceed five years.

**§12.325 Scope of debarment.**

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§12.311 through 12.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these

participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

#### Subpart D - Suspension

##### §12.400 General.

(a) The suspending official may suspend a person for any of the causes in §12.405 using procedures established in §12.410 through §12.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §12.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

##### §12.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§12.400 through 12.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §12.305(a); or

(2) That a cause for debarment under §12.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

##### §12.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* The Department of the Interior shall process suspension actions as informally as practicable, consistent with principles of

fundamental fairness, using the procedures in §§12.411 through 12.413.

##### §12.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §12.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§12.411 through 12.413 and any other Department of the Interior procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

##### §12.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

**§12.413            Suspending official's decision.**

The suspending official may modify or terminate the suspension (for example, see §12.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: Based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending

official's decision shall be sent to the respondent.

**§12.415            Period of suspension.**

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

**§12.420            Scope of suspension.**

The scope of a suspension is the same as the scope of a debarment (see §12.325), except that the procedures of §§12.410 through 12.413 shall be used in imposing a suspension.

**Subpart E - Responsibilities of GSA, Department of the Interior and Participants**

**§12.500            GSA responsibilities.**

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

- (2) The type of action;
- (3) The cause for the action;
- (4) The scope of the action;
- (5) Any termination date for each listing; and
- (6) The agency and name and telephone number of the agency point of contact for the action.

**§12.505 Department of the Interior responsibilities.**

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which the Department of the Interior has granted exceptions under §12.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in §12.500(b) and of the exceptions granted under §12.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

**§12.510 Participants' responsibilities.**

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a

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primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #): Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to the Department of the Interior if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

**Appendix A - Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**

*Instructions for Certification*

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. the inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the perspective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transactions," "participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department of agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded

from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, is a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

*Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions*

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **Appendix B - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

##### *Instructions for Certification*

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transactions," "participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded," as used in this

clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction

originated may pursue available remedies, including suspension and/or debarment.

*Certification Regarding Department, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions*

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(FR Doc. 88-11561 Filed 5-25-88; 8:45 am)



**ACQUISITION METHODS AND APPRAISALS**

1. **Methods of Acquisition.** Acquisition of land and water, or interests therein, may be accomplished through purchase, eminent domain, transfer, gift, or other means. (see Chapter 670.3 for matching costs.) All acquisitions must conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended (see Chapter 650.3). The Service encourages public policies and procedures for the acquisition of real property that are fair and consistent, and directed toward giving the property owner the full measure of compensation authorized by law, promptly, with a minimum of inconvenience, and without prolonged negotiation or costly litigation.
  - A. Every reasonable effort should be made to acquire real property by negotiated purchase.
  - B. Real property must be appraised before the initiation of negotiations, in accordance with Subpart B of Attachment 650.3A, and the property owner given a statement of just compensation for the property. In no event can the amount established as just compensation be less than the amount of the approved appraisal. (see Section 675.2.5). Property owners shall be afforded an opportunity to accompany the appraiser during the inspection of the property. No policy or practice will be permitted that would penalize the uninformed owner as compared with the property owner who is more knowledgeable about real estate values.
  - C. Condemnation should not be advanced or delayed in order to induce an agreement on price. If an agreement does not appear possible after a reasonable period of negotiation, the project sponsor may, if authorized by law, institute condemnation proceedings.
  - D. If a partial taking would leave the owner with an uneconomic remnant, the sponsor shall offer to acquire the entire property.
  - E. In determining the boundaries of a project, the sponsor should take into account human considerations, including the economic and social effects of the acquisition and subsequent development on owners and tenants in the adjacent area, in addition to engineering and other factors.
2. **Basis For Assistance.** Generally, the market value standard will be used as the basic measure of L&WCF assistance on acquisitions. L&WCF assistance shall be based upon evidence of this value. When determined by the Service to be capital costs and when other pertinent conditions are met, any degree of long term interest in real property can be considered for matching aid, whether purchased by or donated to the project

sponsor. Properly documented costs of severance damage may be matched. Severance damage is the diminution in value of the remaining land due to the particular land taken and is considered to be an inherent part of just compensation. Incidental costs of acquisition may not be matched except for those allowed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended.

Payments may be made after the Project Agreement has been executed for the project involved. When advance payments are made, the level of Federal participation will later be determined as the amount which is adequately supported. If necessary, adjustments will be made in the final settlement of the project.

3. **Summary of Documentation Requirements.** Unless waived, the documentation listed in Section 650.3.5C is needed for each acquisition.
4. **Service Action on Acquisition Documents.** The Service will spot check appraisal reports approved by the SLO for adequacy and consistency. Other documents may also be spot checked to determine whether they adequately serve the purposes intended for them. Additional information including new appraisals may be required when circumstances so warrant.
5. **Waiver of Requirements.** The Service may waive any of its documentation or payment requirements upon request or upon its own initiative, when in the opinion of the Service a requirement is not necessitated by law and does not reduce any protections provided by P.L. 91-646. When such a waiver is given, the Service reserves the right to establish suitable and reasonable conditions under which the waiver may be operative.

When a waiver is needed, it should be requested by the State Liaison Officer. The request should include a justification for the waiver and a statement of how a proposed substitute report or system would meet the need of the Service to justify payments from the L&WCF program.

6. **Appraisals.** The project sponsor should secure at least one appraisal of the appropriate type by a qualified person for each parcel to be taken. Standards for appraisals used shall be consistent, to the extent appropriate, with the current Uniform Appraisal Standards for Federal Land Acquisition published by the Land Acquisition Conference. (see Section 650.3.9A). Except for written Findings of Value (C, below), the appraisal should be an analytical narrative report following current professional appraisal practices involving the application of standard techniques, such as comparative or market cost less depreciation, and income approaches to value. Other portions of the report, such as introductory and supporting data, limiting conditions and certifications

or facilities that will not directly enhance its outdoor recreation utility.

Generally, this will necessitate a review of appraisals prepared in accord with Chapter 675.2 for both the property proposed to be converted and that recommended for substitution. However, at the discretion of the Regional Director, a State certification that appraisals of both properties are acceptable and reveal that the replacement property is of at least equal fair market value as that of the property to be converted can be accepted. Exercising this authority should be consistent with the State's review responsibilities with respect to donation appraisals. (see 675.2.6E).

- (3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:
  - (a) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property.

In accordance with Section 6(f)(3) of the L&WCF Act as amended by Section 303 of the Emergency Wetlands Resources Act of 1986, wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion

information as directly affects the property being appraised.

(6) Property Data.

- (a) Site. Describe soil, topography, mineral deposits, easements, etc. If there is an indication that mineral deposits have more than a nominal commercial value, this fact shall be clearly stated.
- (b) Improvements. This shall be by narrative description, including dimensions of principal buildings and/or improvements.
- (c) Equipment. This shall be by narrative description including the condition of equipment.
- (d) Condition. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised and, whenever applicable, the repair or replacement requirements to bring the property to usable condition.
- (e) Assessed Value and Annual Tax Load. Include the current assessment and dollar amount of real estate taxes. If the property is not taxed, the appraiser shall estimate the assessment in case it is placed upon the tax roll, state the rate, and give the dollar amount of the tax estimate.
- (f) Zoning. Describe the zoning for the subject and comparable properties and if rezoning is imminent, discuss under item (7).

- (7) Analysis of Highest and Best Use. The report shall state the highest and best market use that can be made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use. In no case shall the land be appraised for one highest and best use and the value of the improvements added when they do not contribute to the fair market value of the land under the highest and best use. Such special purpose appraisals are not allowable.
- (8) Land Value. The appraiser's opinion of the value of the land shall be based upon its highest and best use, regardless of any existing structures and shall be supported by confirmed current factual data (sales and offerings) of comparable, or nearly comparable, lands having like optimum uses. Differences shall be weighed and explained to show how they

indicate the value of the land being appraised.

- (9) Value Estimate by Cost Approach. This section shall be in the form of computational data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional and economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.
- (10) Value Estimate by Income Approach. This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross rent or income; (b) an itemized estimate of total expenses including reserves for replacements.
- Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.
- (11) Value Estimate by Comparative (Market) Approach. All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions of sale. Each comparable sale shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.
- (12) Interpretation and Correlation of Estimates. The appraiser shall interpret the foregoing estimates and shall state the reasons why one or more of the conclusions reached in items (9),(10), and (11) are indicative of the market value.
- (13) Tabulation of History of Conveyance (property sales and transfers). Include parties to the transactions, dates of purchase, and amounts of consideration for at least 5 years prior to appraisal.

(14) Certification of Appraiser.

- (a) He/she has personally inspected the property.

- (b) He/she has no present or contemplated interest in the property.
- (c) That in his/her opinion the market value of the taking as of \_\_\_\_\_ is \$\_\_\_\_\_  
(Valuation date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date report submitted)

(15) Exhibits and Addenda. (Note: All maps and plans may be bound as facing pages opposite the description, tabulation, or discussions they concern).

- (a) Location Map. (Within the city or area)
- (b) Comparative Map Data. (Show geographic location of the appraised property and the comparative parcels analyzed.)
- (c) Detail of the Comparative Data. (Narrative)
- (d) Plot Plan.
- (e) Floor Plans. (when needed to explain the value estimate)
- (f) Photographs. Pictures shall show at least the front elevation of the major improvements, plus any unusual features. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as pages facing the discussion or description to which the photographs pertain. All graphic material shall include captions.
- (g) Other Pertinent Exhibits.

B. Abbreviated Appraisal Report. An abbreviated appraisal report, compiled by a qualified appraiser and adequately related to comparable sales, is acceptable for a parcel with value estimate between \$5,000 and \$25,000. The abbreviated report should include:

- (1) A brief description of the subject property to include physical characteristics, present use, zoning, public utilities associated with the land, deed restrictions, and any other pertinent information.

- (2) A legal description of the real property to be acquired and a plat.
  - (3) At least a 5 year history of conveyances (sales and transfers), including parties to the transactions, dates of purchase, and amounts of consideration.
  - (4) An analysis and statement of the property's highest and best use.
  - (5) Supporting data, including two or three comparable real property sales, a brief analysis of those sales, and a map showing their locations relative to the land acquired.
  - (6) The appraiser's certification and signature.
  - (7) The date the value estimate applies.
  - (8) A statement of the appraiser's experience and qualifications.
- C. Finding of Value. Where a parcel has a value of less than \$5,000 and the expense of an appraisal would be disproportionate to its benefit, a written finding of value by a qualified appraiser will be acceptable for approval. This finding of value can be based on the individual's knowledge of land values, but should include a statement of the appraiser's experience and qualification, including a short description of the factors considered and the means by which a conclusion was reached. These statements should be sufficiently detailed so as to enable the State Liaison Officer to judge their respective merits.
- D. Appraisals. When lands are acquired through judicial proceedings, the price determined by the court will be accepted by NPS in lieu of any previous Service or State approved appraised value. The Service, however, will not be obligated to match an amount higher than the approved support ceiling of the project.
- E. Acquisition by Donation. An appropriate appraisal report is administratively required for all projects involving the donation of real property or interests therein (see also 670.2.2.C.) for determination of matching share. Prior to project approval or the first reimbursement request:
- (1) The State Liaison Officer shall ensure that the project sponsor secures adequate appraisal services.
  - (2) The project sponsor will then, at its own expense, have an appraisal made in accord with commonly accepted appraisal

practices and Section 675.2.6. The cost of the appraisal is not reimbursable.

- (3) Upon completion of the appraisal, it shall be submitted to the State for review and the Service for approval. The Regional Director may authorize the State Liaison Officer to review and approve donation appraisals where the value of the property to be donated is \$100,000 or less.
- (4) If the appraisal is approved, the estimated fair market value will be the basis for L&WCF assistance.

In order to resolve disputes as to the fair market value, the Service, through the Regional Office, may provide an additional appraisal with the cost to be borne by the Service.

7. **Statement on Differences in Value.** An appraisal, if competently compiled by a qualified person, should be an acceptable estimate of property value; it cannot be assumed, however, to be an absolute statement of value. The approved appraisal value is the basis for establishing the amount of just compensation offered to the owner (seller) at the initiation of negotiations. The negotiation between a willing seller and a willing buyer will often set a price that is higher than the appraisal, and this market place value must be considered with the appraised value in establishing the reasonable limits of L&WCF assistance. (See Section 24.102(i) of Attachment 650.3A).

When the State believes that the administrative settlement is an adequate indication of market value, yet it is higher than the approved appraised value, a detailed and well documented statement on this difference with all pertinent appraisal documents must be submitted before reimbursement is requested. This statement should explain why the appraisal may not reflect the market value and what steps the project sponsor took to establish the value, and include adequate market data to substantiate the value conclusion. If the Service agrees that the administrative settlement represents a reasonable estimate of the property, that amount will be eligible for assistance.

The requirements pertaining to acquisitions at less than the approved appraised value are found in Chapter 650.3.10. (Acquisition at less than Just Compensation).

8. **Reservations and Outstanding Rights.** In an effort to stretch the dollars spent, the project sponsor might wish to purchase less than fee simple title. This would be permissible when fee simple title is excessively expensive, and a lesser control of the area will not detract from the



recreation use of the land and not have significant impact on the environment.

9. The Federal Government will not obtain a legal right or title to any area or facility acquired with L&WCF assistance. The State must have on file satisfactory evidence of the purchase price and a description of the character and nature of the title received by the project sponsor before requesting reimbursement from the Service.

Evidence of title, such as a written statement by the State Attorney General, title insurance, or other means considered reasonable and adequate, must also be available to the SLO before requesting reimbursement from the Service.

Requests for payment certified by the SLO will be acceptable evidence of the purchase price and that the State has on file all the required documents, including those required by P.L. 91-646. (see Chapter 650.3.5.).

A survey may be required by the Service when there is reasonable doubt about the exact location of the boundary or of the size of the tract being acquired.

10. **Responsibility for Quieting Title or for Replacement of Properties Acquired with Defective Title.** The State is responsible for quieting claims against title and for replacing property found to have defective title with other properties of equivalent value, usefulness and location acceptable to the Director.
11. **Acquisition of Interest in Real Property.** The acquisition of easements, rights-of-way, etc., will be viewed in the same light as full takings. Documentation of value by appraisals will be the same. The project proposal should adequately explain why lesser interests are to be acquired.

**PROCUREMENT STANDARDS**

1. **Project Performance by Contract.** Projects or portions thereof may be undertaken through contracts in accord with the procurement standards and guidelines set forth in Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 43 CFR Part 12.1 - .52 (see 675.3 Attachment A). This includes the procurement of supplies, equipment, construction and services. Equal Employment Opportunity Contract Compliance Requirements are set forth in Chapter 650.5.
2. **Procurement Standards.**
  - A. **Procedures.** Grantees and subgrantees will use their own procedures which reflect applicable State and local laws provided that the procurements conform to the requirements of 43 CFR Part 12.1 - .52 (see 675.3 Attachment A).
  - B. **Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms (see also Chapter 650.10.)**
    - (1) Affirmative steps must be taken by the project sponsor to assure that small and minority businesses and women's business enterprises are utilized when possible. Affirmative steps shall include:
      - (a) Including qualified small and minority businesses on solicitation lists.
      - (b) Assuring that small and minority businesses are solicited whenever they are potential sources.
      - (c) When economically feasible dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
      - (d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
      - (e) Using the services and of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

- (f) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraph (a) through (e) above.
  - (2) Project sponsors are encouraged to procure goods and services from labor surplus areas.
- C. Contract Provisions. Contract provisions contained within 675.3, Attachment A apply as stated, except that the provisions of 43 CFR Part 12.36(i)(5), concerning the Davis-Bacon Act to not apply to the L&WCF program.

## A-102 UNIFORM RULE

## Text of the Common rule

The text of the common rule as adopted by the agencies in this document appears below.

### 43 CFR PART 12.10 - 12.52. -Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

#### Subpart A - General Sec.

- \_\_\_\_.1 Purpose and scope of this part.
- \_\_\_\_.2 Scope of subpart.
- \_\_\_\_.3 Definitions
- \_\_\_\_.4 Effect on other issuances.
- \_\_\_\_.5 Additions and exceptions.

#### Subpart B - Pre-Award Requirements

- \_\_\_\_.10 Forms for applying for grants
- \_\_\_\_.11 State plans.
- \_\_\_\_.12 Special grant or subgrant conditions for "high-risk" grantees.

#### Subpart C - Post-Award Requirements

##### Financial Administration

- \_\_\_\_.20 Standards for financial management systems.
- \_\_\_\_.21 Payment.
- \_\_\_\_.22 Allowable costs.
- \_\_\_\_.23 Period of availability of funds.
- \_\_\_\_.24 Matching or cost sharing.
- \_\_\_\_.25 Program income.
- \_\_\_\_.26 Non-Federal audit.

##### Changes, Property and Subawards

- \_\_\_\_.30 Changes.
- \_\_\_\_.31 Real Property.
- \_\_\_\_.32 Equipment.
- \_\_\_\_.33 Supplies.
- \_\_\_\_.34 Copyrights.
- \_\_\_\_.35 Subawards to debarred and suspended parties.
- \_\_\_\_.36 Procurement.
- \_\_\_\_.37 Subgrants.

##### Reports, Records, Retention, and Enforcement

- \_\_\_\_.40 Monitoring and reporting program performance.
- \_\_\_\_.41 Financial reporting.

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Replaces all preceding manual releases

- \_\_\_\_.42 Retention and access requirements for records.
- \_\_\_\_.43 Enforcement.
- \_\_\_\_.44 Termination for convenience.

#### Subpart D - After-the-Grant Requirements

- \_\_\_\_.50 Closeout.
- \_\_\_\_.51 Later disallowances and adjustments.
- \_\_\_\_.52 Collection of amounts due.

#### Subpart E - Entitlements (Reserved)

##### Subpart A - General

##### § \_\_\_\_1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

##### § \_\_\_\_2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

##### § \_\_\_\_3 Definitions.

As used in this part:

"*Accrued expenditures* " mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income* " means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost* " of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost

of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271

"*Outlay Report and Request for Reimbursement*" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*": means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the U.S. Office of Management and Budget.

"*Outlays* " (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method* " refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval* " means documentation evidencing consent prior to incurring specific cost.

"*Real property* " means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share* ", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted - not the value of third-party in-kind contributions.

"*State* " means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant* " means an award of financial assistance in the form of money, or property

in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"*Subgrantee* " means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies* " means all tangible personal property other than "equipment" as defined in this part.

"*Suspension* " means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination* " means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant* " mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions* " mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a

cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

#### § 4 Applicability.

(a) *General.* Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §12.46, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583 - the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)(19)(G);

HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section.

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits.

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §12.44(a) (3) through (8) are subject to Subpart E.

#### § \_\_\_\_5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §12.46.

#### § \_\_\_\_6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

### Subpart B - Pre-Award Requirements

#### § \_\_\_\_10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 face sheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

#### § \_\_\_\_11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.



(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ \_\_.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

- (1) Has a history of unsatisfactory performance, or
  - (2) Is not financially stable, or
  - (3) Has a management system which does not meet the management standards set forth in this part, or
  - (4) Has not conformed to terms and conditions of previous awards, or
  - (5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
- (b) Special conditions or restrictions may include:
- (1) Payment on a reimbursement basis;
  - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
  - (3) Requiring additional, more detailed financial reports;
  - (4) Additional project monitoring;
  - (5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
  - (6) Establishing additional prior approvals.
- (c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:
- (1) The nature of the special conditions/restrictions;
  - (2) The reason(s) for imposing them;
  - (3) The corrective actions which must be taken before they will be removed and the

time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C - Post-Award Requirements

Financial Administration

§ \_\_.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to\_

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted

amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

#### § \_\_.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds

and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit

recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless-

(i) The grantee or subgrantee has failed to comply with grant award conditions, or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § \_\_\_.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C.450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

#### § \_\_\_.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a -	Use the principles in -
State, local or Indian tribal government	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) (organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions..	OMB Circular A-21
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

#### § \_\_\_.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a

program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

#### § \_\_\_\_\_.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions - (1) Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in §12.65, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §12.65(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not

treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services - (1) Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or

buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in , in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ \_\_\_\_25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §12.74.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §12.71 and §12.72.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the

sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

#### § \_\_\_\_ .26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements

of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §12.36 shall be followed.

#### Changes, Property, and Subawards

#### § \_\_\_\_ .30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 12.62) contain requirements for prior approval of certain types of costs. Except where waived,

those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes - (1) Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes are anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a

third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §12.76 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §12.62) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

### § \_\_.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

### § \_\_.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal



funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §12.65(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §12.72(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

### § \_\_.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

### § \_\_.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

### § \_\_.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

### § \_\_.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding

agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only-

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §12.76. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, excepting those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough

qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.*

(1) Procurement by *small purchase procedures*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §12.76(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts,

transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small

purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §12.62). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being

proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [ delete ``," ] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed \$25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed \$25,000, specifies a "brand name" product; or

(iv) The proposed award over \$25,000 is to be awarded to other than the apparent lowbidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as

being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal

Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order

11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### § \_\_\_\_37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §12.82 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section §12.50;

(2) Section §12.51;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in §12.61; and

(4) Section §12.90.

#### Reports, Records Retention, and Enforcement

#### § \_\_\_\_40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and



explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

#### § \_\_\_\_41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as

may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report - (1) Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with §12.81(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report - (1) Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted

within 15 working days following the end of each month.

(d) *Request for advance or reimbursement - (1) Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §12.81(b)(3).

(e) *Outlay report and request for reimbursement for construction programs - (1) Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in 12.81(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §12.81(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.*

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §12.81(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §12.81(d).

(iii) The Federal agency may substitute the Financial Status Report specified in §12.81(b) for the Outlay Report and Request

for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §12.81(b)(2).

§ \_\_\_\_ .42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §12.76(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate record keeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period - (1) General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee

or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar

methods may be substituted for the original records.

(e) *Access to records* - (1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

#### § \_\_.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §12.75).

#### § \_\_.44 Termination for convenience.

Except as provided in §12.83 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §12.83 or paragraph (a) of this section.

#### Subpart D - After-The-Grant Requirements

#### § \_\_.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this time frame. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with §12.72(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ \_\_.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in §12.82;

(d) Property management requirements in §12.71 and §12.72; and

(e) Audit requirements in §12.66.

§ \_\_.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

**L&WCF PROJECT SIGN STANDARD**

1. **Acknowledgement of L&WCF Assistance.** Suitable permanent public acknowledgement of L&WCF assistance at all project sites is required by the Service. When significant acquisition or development projects over \$500,000 are initiated, appropriate standardized temporary signing shall be located on or near the affected site, to the extent feasible, so as to indicate that the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the percentum and dollar amounts financed by Federal and non-Federal funds and that the source of the Federal funding includes moneys derived from Outer Continental Shelf receipts.

Upon termination of temporary signing, permanent signing shall be installed. Such acknowledgement will represent a Federal-State-local partnership role in creating new high quality outdoor recreation areas and facilities. Temporary signing is not required for acquisition projects if permanent signing immediately follows the purchasing of the site.

2. **Guidelines for Temporary Signing.** Temporary signs are required for all development projects with a total cost of \$500,000 or more, and for all combination projects with a development phase of \$500,000 or more in total costs. In the case of combination projects, temporary signing will commence at the time development is initiated with the sign acknowledging both acquisition and development. Development projects will be signed at the time construction action is initiated. In both cases the sign will remain until completion of the development.

Publicizing an acquisition project by the installation of signs prior to the completion of the acquisition, particularly those involving the acquisition of several parcels, could seriously affect the negotiations for the properties to be acquired. Therefore, signing of acquisition projects should be delayed until the acquisition of all parcels is completed and all relocations have occurred. Also, the display of dollar amounts for acquisition projects is optional where such display may be detrimental to the project or future acquisitions.

3. **Use of Symbol.** Use of the L&WCF symbol on project signs is optional. (see Attachment 675.4A). However, we encourage its use as a part of the acknowledgement of L&WCF assistance at entrances to outdoor recreation sites, at other appropriate on-site locations, and in folders and park literature. While the symbol format may not be altered, such considerations as color combinations, method of sign construction, size, and placement are matters for determination by the State. The acknowledgement of Land and Water Conservation Fund assistance will be checked during compliance inspections.

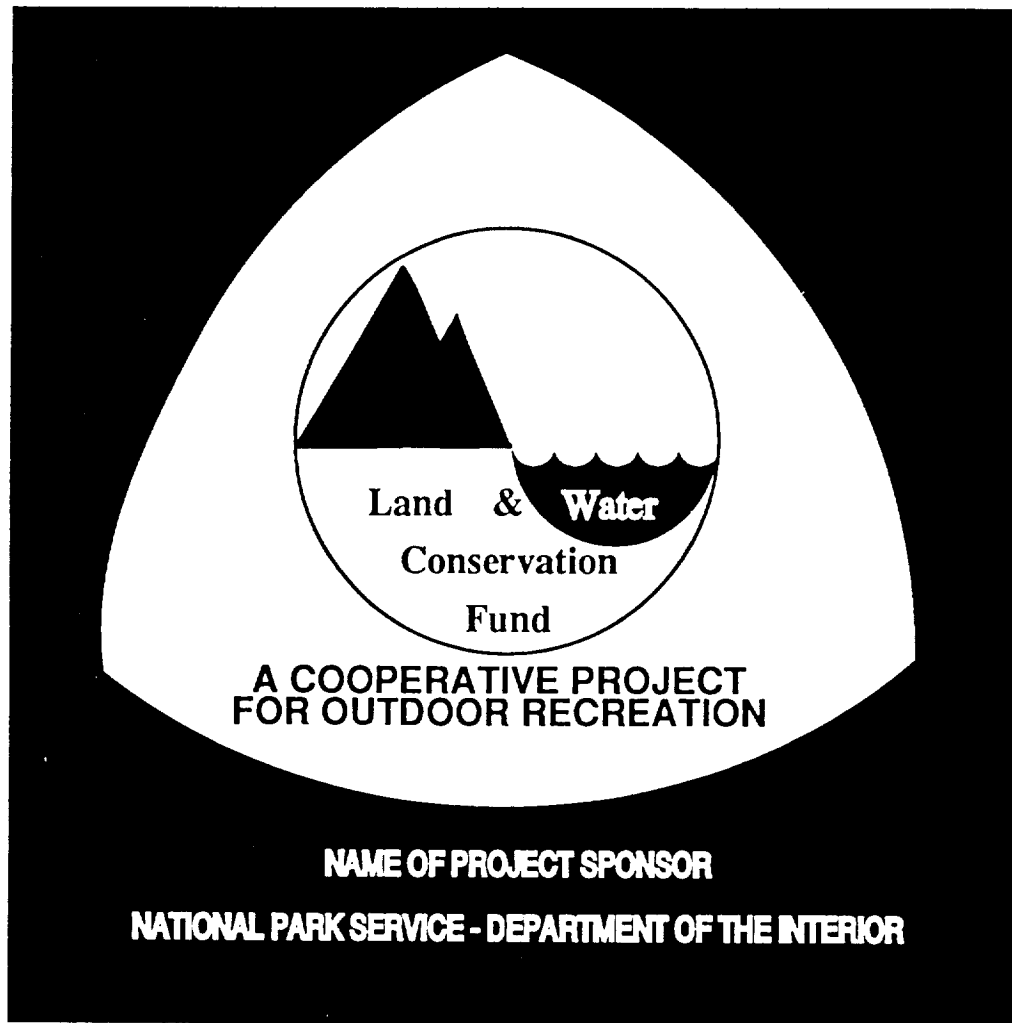
4. **Standards for Temporary Signs.** Unless precluded by local sign ordinances, temporary signs shall be no less than 2 feet by 3 feet. The size of lettering should be based on the amount of information placed on the sign. The selection of colors will be at the discretion of the State, however, there should be sufficient contrast between the background and the lettering to make the sign readily visible without being intrusive. The sign should include the source, percent, and dollar amount of all Federal, State and/or local funds. The second line on the temporary sign will indicate whether the project is acquisition, development, or both. In addition to the Service, the administrative acknowledgement may include the State agency responsible for the L&WCF program. Although optional, symbols for the L&WCF and/or the project sponsor may be used. Here is a suggested format:

THE CITY OF XXXXXX  
Public Outdoor Recreation Site Development  
Aided by  
THE LAND AND WATER CONSERVATION FUND  
Administered by the  
National Park Service  
U.S. Department of Interior  
Funding

L&WCF	50%	\$250,000
State of XXXXX	25%	\$125,000
City of XXXXX	25%	\$125,000
Total Project		\$500,000

Optional: L&WCF Revenue from Outer Continental Shelf Receipts,  
Motorboat Fuel Tax and Sale of Surplus Federal Properties

5. **Allowable Cost.** Costs related to project acknowledgement are allowable costs as part of initial capital investment, and may be shared by L&WCF assistance. Replacement costs as a part of project operation and maintenance are not allowable





**FINANCIAL MANAGEMENT AND REPORTING**

1. **Purpose.** This chapter generally covers accounting, records, and reporting requirements.
2. **Financial Responsibility.** The State shall be responsible for the financial management of approved projects. Appropriate internal controls must, therefore, be adopted and installed to insure that the project is accomplished in the most efficient and economical manner.
3. **Pre-award Surveys.** The Director may conduct pre-award surveys before qualifying a project proposal to determine the adequacy of financial and administrative management practices and procedures as they may relate to the execution of the proposed project. Periodic surveys may also be undertaken during the project period to assure the continued effectiveness of the financial and administrative management and to provide assistance where necessary or requested. The scope of such surveys shall include the review of the internal systems of financial and administrative controls, planning techniques and procedures.
4. **Standards for Grantee Financial Management Systems.** State and local government systems for the financial management of L&WCF assisted activities shall be in accordance with 42 CFR 12.1 - .52 (see 675.3, Attachment A), and provide for:
  - A. Accurate, current, and complete disclosure of the financial results of each project grant.
  - B. Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
  - C. Effective control over and accountability for all funds, property, and other assets. The grantee shall adequately safe-guard all such assets and shall assure that they are used solely for authorized purposes.
  - D. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government.
  - E. Procedures for determining the allowability and allocability of costs in accordance with the provisions of OMB Circular A-87 and this Manual.

- F. Accounting records which are supported by source documentation. Separate project accounts shall be established and identified by the number assigned to the project by the Service.
- G. Audits to be made by the State in accordance with OMB Circular A-128 to determine, at a minimum, the fiscal integrity of financial transactions and reports, and compliance with laws, regulations, and administrative requirements. The State will schedule such audits with the required frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity. (see Chapter 675.7).
- H. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The State shall require all project sponsors to adopt all the standards in paragraph 4 above.

5. **Monitoring and Reporting of Program Performance.** In accordance with 43 CFR 12.1 - .52, the following sets forth the procedures for monitoring and reporting program performance (reporting authority approved by OMB No. 1024-0032 09/30/84):

- A. States shall constantly monitor the performance of approved projects to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. (see Chapter 675.1)
- B. Performance reports shall be submitted with each project billing or drawdown unless a report had been submitted within the previous three months. Performance reports shall be submitted annually on March 31 for all active projects approved more than one year previously but for which no billings or drawdowns have been submitted during the past year.
- C. States have the option of submitting an annual (calendar year) consolidated performance report for all active projects and project elements approved more than one year previously. The Service will provide each State with a listing of active projects that fall within this category.

Sufficient space will be provided on the listing of projects for the State to briefly report project status. The list will include, for each project or consolidated project element, the amount expended to date and the target dates. The State report must be submitted to the Service by March 31 for the previous calendar year.

- D. Regardless of the approach used, the report will present the following information:
- (1) The status of the work required under the project scope including the percent of work completed and percentage of costs billed and whether the project will meet established target dates for completion.
  - (2) Other pertinent information including when appropriate analysis and explanation of cost overruns, time schedule delays and other similar problems encountered and their expected impact on the project, etc.
- E. If any performance review conducted by the State discloses the need for change in the Project Agreement, the State shall submit a request for an amendment in sufficient time to be processed before expiration of the project period.
- F. The Service shall make site visits as frequently as practicable on a spot check basis to:
- (1) review project accomplishments and management control systems, and
  - (2) provide technical assistance as may be required.
6. **Report of Federal Cash Transactions.** When Funds are advanced through the use of OMB Standard Form 270, the State shall submit a Report of Federal Cash Transactions (OMB Standard Form 272) (see Attachments 675.6D and F). The Service shall use this report to monitor cash advanced to the State. States shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter.
7. **Relocation Report.** The head of each agency having responsibilities for federally assisted programs that come within the purview of P.L. 91-646 is required to prepare and submit a report to the President once every three years. (see Attachment 650.3A). In order to accumulate the required statistical data, for each billing draw down against the Letter of Credit, which includes payments and expenses under Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the State shall tabulate and retain the statistical data as shown on the following form beginning October 1, of each year and retain the data for relocation report. (See 650.3.11.)
- A. GSA-2997 Annual Report on Relocation and Real Property Acquisition Activities. (see Attachment 650.3A).

At the end of each Federal fiscal year each State shall consolidate and tabulate the statistics collected during the fiscal year into one set of the above forms. One copy of the consolidated report will be forwarded to the NPS Regional Office by November 1, and one copy will be retained in the State files.

No later than November 15 of each year each Regional Office shall consolidate the State reports into a Regional report. Two copies of the Regional report should be prepared with one copy provided to the NPS Washington office responsible for the L&WCF program, and one copy retained in the Regional files. The Washington office will consolidate the Regional reports into a Service report and provide the necessary copies to the Department.

8. **Retention and Custodial Requirements for Records.** In accordance with 43 CFR Part 12.42, the following policies will apply to records maintenance:
  - A. Financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years after final payment on a project or element. The records shall be retained beyond the 3 year period if audit findings have not been resolved.
  - B. The retention period starts from the date of the submission of the final expenditure report.
  - C. State and local governments are authorized to substitute microfilm copies in lieu of original records.
  - D. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audits, examinations, excerpts and transcripts.
  - E. The Service shall submit, after project closeout and microfilming, all copies of significant maps and records (particularly oversize items) to the Federal Archives Records Center for retention into perpetuity and for compliance with Section 6(f)(3) of the L&WCF Act. Plans and specifications requested by the Service for project review purposes will be returned to the States for retention (see also 675.3.4.).

**PAYMENTS**

1. **General.** Grant payments will be made to States in a manner that minimizes the time elapsing between the disbursement by the State and the transfer of funds from the U.S. Treasury, whether such disbursement occurs prior to or subsequent to the transfer of funds. Grant payments are made through electronic fund transfer via the SMARTLINK Payment Management System, reimbursement by Treasury check in accord with the guidelines of 43 CFR 12.1 - .52 and U.S. Treasury Circular No. 1075, or advance by SMARTLINK or via Treasury check. States, whether on the SMARTLINK or reimbursement by Treasury check method of payment, must obtain NPS approval of the required billing progress report prior to drawdowns on planning grants. (See 630.2.15-.16).
2. **Qualifications.** Electronic Fund Transfer via SMARTLINK is the preferred method of payment for States which meet the following conditions:
  - A. The State requests authorization for use from NPS;
  - B. The State has established or demonstrated to NPS the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement;
  - C. The State's financial management system meets the standards for fund control and accountability prescribed in 43 CFR 12.1 - .52; and
  - D. The Service has reviewed the State's financial practices and found them to be adequate based on the State's past experience, responsiveness to audit exceptions, and internal audit procedures.
3. **Reimbursement by SMARTLINK Payment Management System.**
  - A. **Applicable States/Grants.** All States will use the SMARTLINK payment system with the exception of those which are either: 1) mandated by NPS to use the direct reimbursement method of payment; or, 2) which lack the technical capability to use a computer-based system (in other words, State offices without access to appropriate computer equipment). Once the State has adopted SMARTLINK for reimbursement purposes, it must utilize only this method unless rescinded by the Service. For planning grants, NPS approval of the required billing progress report must be received in advance of drawdowns via SMARTLINK. (See 630.2.15-.16).

**B. Getting Started.**

- (1) Equipment Needed: 1) A personal computer (PC); 2) A modem; 3) Tele-communications software (NOTE: KERMIT is provided and recommended by HHS but others may work).
- (2) Communication Parameters: 1) Baud rate = 1200; 2) Data bits = 7; 3) Stopbits = 1; 4) Parity = Even; 5) Emulation = VT100; 6) Duplex = Half.
- (3) Initiation Steps:
  - (a) The SLO should notify, in writing, the appropriate NPS Regional Office, that the State is prepared to begin utilization of SMARTLINK. Included with this notification should be the grantee name and address, grantee point of contact name (SLO or designate), title and telephone number and a completed **Direct Deposit Sign-Up Form** (SF-1199A, see attachment 675.6A) which is to be obtained from the bank which maintains the State's account. This information will be forwarded by the NPS Regional Office to NPS - Accounting Operations Division (with copies to the Recreation Grants Division, WASO).
  - (b) NPS-AOD will certify in writing to HHS that the State is eligible to be on SMARTLINK for L&WCF drawdowns. This certification will involve the transmission, by NPS-AOD, of appropriate grantee payment authorization data (i.e., grantee name and address, grantee point of contact name (SLO or designate), title and telephone number, project numbers, total amounts authorized/unpaid balances, and the completed SF-1199A) to HHS. Subsequent to the original initiation phase, data on new grants and dollar amendments on old grants will be forwarded to HHS by NPS-AOD upon posting of the applicable grant agreements or amendments.
  - (c) Following completion of the above steps, the State will be provided, by HHS, with the following:
    - (i) The telephone number used to access SMARTLINK.
    - (ii) A unique password permitting connection with the SMARTLINK greeting screen. (NOTE: Lost passwords may only be replaced by contacting HHS).

- (iii) A Payment Management System (PMS) account number.
- (iv) An "Old Identification Number" which must be changed on the first use of SMARTLINK and at least every 60 days (since last use) thereafter.
- (v) "User's" and "Technical" Guides for detailed reference.

C. Making Drawdowns.

- (1) Dial into SMARTLINK using the phone number provided.
- (2) When the screen displays "Connect," press the enter/return key twice.
- (3) At the "Enter Translator Number" command, type "5" and press enter/return.
- (4) When the "Computer Center" and "Logon Commands" appear, type your Password and press enter/return.
- (5) A "Welcome" screen will appear. Press enter/return. (If you receive a "System Not Available At This Time" message, disconnect and try later).
- (6) The security screen will be displayed (the line at the bottom of the screen can either be ignored or deleted by holding down the Control key and pressing the letter "O"). Type:
  - (a) Your Account Number; and,
  - (b) Your Old Identification Number; and,
  - (c) If changing the I.D. number: Your New Identification Number.

(NOTE: You will be permitted three attempts to enter the correct security data. Failure on the third try will result in disconnection.).

- (d) Press Enter/Return.

- (7) The "Payment Request" screen will now be displayed with the Identification and Account numbers already filled in. If,

once you are connected, you must log off/disconnect without completing a transaction, type a question mark in one of the other fields at the top of the screen (not a "Sub-Account" field) and press Enter/Return. A blank security screen will then appear. Type "End" in the Account Number field and press Enter/Return.

Use your Tab or Backspace key to move from field to field (refer to the HHS User's Guide section on cursor movement if these keys don't work). Enter the Payment Due Date ("YYMMDD") which should reflect today's date, **TOTAL** amount requested, Federal Cash Balance on Hand (always "0" unless an advance has been approved by the NPS Washington Office), and Expected Disbursement Amount (which should equal the total amount requested unless an advance has been authorized).

- (8) Remaining on the "Payment Request" screen, enter your "Sub-Account" data (for L&WCF purposes, a sub-account is simply a specific individual grant on which a payment is now being requested). Use the tab and backspace keys (or other keys as appropriate) to move from field to field. **Do not press the Enter/Return key until all data has been entered correctly.**

For each grant involved, up to a maximum of eight per screen, enter the full eight-character **L&WCF Project Number** (two-digit State prefix, hyphen, five trailing digits) and the **Amount** (no dollar signs or commas and with or without the decimal point and cents) of this drawdown. The total amount requested (sum of the amounts requested for the eight or fewer drawdowns on this screen) must equal the "Total Amount Requested" entered in the top section of the screen.

- (9) If making a drawdown on a consolidated project, the project number must be entered as instructed in step 8, above (no element letter as part of the project no.). The project number, with the appropriate element(s), should be reported on the "Classification of Amount Requested" form described in 675.6.3C(16).
- (10) Do not make entries in the "+/-" fields unless the entry for this project corrects an overdraw on a prior billing or payment on a Bill for Collection. In these instances, the amount (no "-" or "+" sign) should be entered in the "Amount" field and a "-" sign in the "+/-" field. The negative amount should be reported on the "Classification of



Amount Requested" form described in 675.6.3C(16) with an explanation in the "Remarks" section of that form.

- (11) Check your entries/figures carefully and make any necessary corrections before pressing Enter/Return.

(See attachment 675.6B for a sample of a completed SMARTLINK Payment Request Screen).

- (12) As a result of your entry, the SMARTLINK system will display either an error message(s) or a message that your request was successfully submitted. If an error message is received, make the required corrections.
- (13) When successfully completed with the above steps, enter either "A" ("Another Payment Request" which returns you to the Security Screen to make another request for up to eight additional projects), "E" ("End" which logs you off of SMARTLINK), or "M" (which retains the Payment Request screen and allows the entry of more requests, subject to the eight-payment-requests-per-screen limitation). **Failure to sign off by typing the appropriate End code may result in your incurring long-distance phone charges through the end of the work day when HHS turns SMARTLINK off.**
- (14) Upon successful completion of steps 1-13 above, various computer edits established by HHS will be performed. Additional edits may be established by NPS. The HHS edits consist of validation matches of project numbers, payment dates, fund balances, and account numbers. Requests passing all edits are posted to the recipient's account. Requests failing the edits are held in holding files for review by the HHS accountant(s) assigned to NPS who will take action as appropriate including contacting NPS to resolve problems or obtain authorization to proceed.
- (15) Payment files are transmitted to the Federal Reserve Bank in Richmond, Virginia for further processing (grantee payment). The recipient's bank will receive the requested funds within 24 hours (or less) of the request.
- (16) Upon completion of all payment requests on a given date, the State must submit, WITHIN 24 HOURS, a completed "Classification of Amount Requested" form to the NPS Accounting Operations Division (Grants Section, P.O. Box 4800, Reston, VA 22090) with a copy to be forwarded at the same time to the applicable NPS Regional Office. Failure to

adhere to this requirement will result in removal from SMARTLINK and placement on direct reimbursement. (See attachment 675.6C for a sample of the Classification form, along with completion constructions).

4. **Reimbursement by Treasury Check.** The State shall use the following forms in requesting reimbursement by Treasury Check:
  - A. For planning projects the "Request for Advance or Reimbursement" (OMB 80-R0183, SF-270) (see attachment 675.6D).
  - B. For acquisition and development projects "The Outlay Report and Request for Reimbursement for Construction Programs" (OMB 80-R0181, SF-271) (see attachment 675.6E).

The State shall submit to the Service one (1) original and two (2) copies of the appropriate form when requesting reimbursement by Treasury Check. Such request may be submitted as necessary for reimbursements.

5. **Advanced Payment.** An advance is a payment made to a State upon its request before cash outlays are made to the project sponsor or through the use of predetermined payment schedules before such payments are made to the project sponsor. Advances may be made by use of SMARTLINK or through the Treasury check method, subject to the conditions outlined below.

Due to the speed with which SMARTLINK allows for payment, NPS has determined that advances are generally prohibited. However, NPS will consider the payment of advances on development projects where the matching share is non-cash, and on acquisition projects where funds must be available "up front" in order to prevent the loss of an available site to other interested buyers. Such advances must receive prior approval of the NPS Washington Office. The request should be submitted by the State to the Regional Office to initiate processing. Abuse of this policy will result in revocation of a State's authority to use SMARTLINK and placement on the direct reimbursement method of payment.

The timing of advances and the procedures to be observed to assure that cash withdrawals occur only as and when essential to meet the needs of the State for its actual disbursements in accord with Treasury Circular No. 1075 are described below:

- A. Advances to a State shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements of the State in carrying out the purpose of the approved project.

- B. Advances made by a State to a project sponsor shall conform substantially to the same standards of timing as indicated in 675.6.5A.
- C. The State shall make such reviews of the financial practices of project sponsors as are necessary to insure against excessive withdrawals of cash from the Treasury and shall institute such remedial measures as may be necessary in the event of excessive withdrawals.
- D. Any moneys advanced to the State are "public moneys" (owned by the Federal Government) and must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure, in accord with 43 CFR 12.1 - .52.
- E. Advance Via SMARTLINK.
  - (1) Advances under SMARTLINK must be requested via a letter from the SLO with a Classification of Amount Requested form (see attachment 675.6C) attached, separate from reimbursement requests.
  - (2) For each advance, on the Classification form, leave a space after the project or element number and type "(ADV)".
  - (3) When all or a portion of the advance is disbursed, this amount must be applied to reduce the advance and make charges to the appropriate project. When a sum is being applied to an advance, indicate such in the remarks section at the bottom of the Classification form. Also, indicate the project number and/or element number and amount and type "(APPL)".
- F. Advance by Treasury Check. In requesting an advance by Treasury check the States shall submit to the Service a "Request for Advance or Reimbursement" (OMB 80-RO183, SF-270) (see attachment 675.6D).

One month after the advance has been received the State shall submit another "Request for Advance or Reimbursement" indicating expenditures made the previous month from the funds advanced. This form shall be used by the Service as a basis for liquidating obligations, reducing the advance account and making charges to the appropriate cost account.

No later than 15 working days after the end of each quarter, the State shall submit to the Service one (1) original and two (2) copies of the "Report of Federal Cash Transactions" (OMB 80-R0182, SF-

272) (see attachment 675.6F). This report shall be used by the Service to monitor cash advanced and to obtain disbursement or outlay information for each project.

6. **Review of Drawdowns.** At least monthly, NPS shall review each State's drawdowns and disbursements for reasonableness of cash balances on hand and the timing of drawdowns. The review shall also cover other financial practices of each State to ensure against excessive withdrawals of Federal funds.

In the event the Service determines a State is making excessive withdrawals of cash, remedial measures such as placement on the direct reimbursement method of payment, or requesting immediate refund of excessive funds to the Service shall be taken to ensure proper use of Federal funds. The only exceptions to the requirement that funds be promptly refunded are when the funds involved 1) will be disbursed by the State within seven calendar days, or 2) are less than \$10,000 and will be disbursed within 30 calendar days.

# L&WCF GRANTS MANUAL ATTACHMENT A

CHAPTER 675.6

Standard Form 1196A  
(Rev. June 1987)  
Prescribed by Treasury  
Department  
Treasury Dept. Cir. 1978

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS US GOVERNMENT PRINTING OFFICE  
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## DIRECT DEPOSIT SIGN - UP FORM

### DIRECTIONS

- To sign up for Direct Deposit, the payee is to read the back of this form and fill in the information requested in Sections 1 and 2. Then take or mail this form to the financial institution. The financial institution will verify the information in Sections 1 and 2, and will complete Section 3. The completed form will be returned to the Government agency identified below.
- A separate form must be completed for each type of payment to be sent by Direct deposit.
- The claim number and type of payment are printed on Government checks. (See the sample check on the back of this form.) This information is also stated on beneficiary/annuitant award letters and other documents from the Government agency.
- Payees must keep the Government agency informed of any address changes in order to receive important information about benefits and to remain qualified for payments.

### SECTION 1 (TO BE COMPLETED BY PAYEE)

<b>A NAME OF PAYEE (last, first, middle initial)</b>		<b>D TYPE OF DEPOSITOR ACCOUNT</b> <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS																			
<b>ADDRESS (street, route, P.O. Box, APO/FPO)</b>		<b>E DEPOSITOR ACCOUNT NUMBER</b>																			
<b>CITY STATE ZIP CODE</b>		<table border="1"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>																			
<b>TELEPHONE NUMBER</b>		<b>F TYPE OF PAYMENT (Check only one)</b>																			
<b>AREA CODE</b>		<input type="checkbox"/> Social Security <input type="checkbox"/> Fed Salary/Mil. Civilian Pay <input type="checkbox"/> Supplemental Security Income <input type="checkbox"/> Mil. Active _____ <input type="checkbox"/> Railroad Retirement <input type="checkbox"/> Mil. Retire _____ <input type="checkbox"/> Civil Service Retirement (OPM) <input type="checkbox"/> Mil. Survivor _____ <input type="checkbox"/> VA Compensation or Pension <input type="checkbox"/> Other _____ (Specify)																			
<b>B NAME OF PERSON(S) ENTITLED TO PAYMENT</b>		<b>G THIS BOX FOR ALLOTMENT OF PAYMENT ONLY (if applicable)</b>																			
<b>C CLAIM OR PAYROLL ID NUMBER</b>		<table border="1"> <tr> <td><b>TYPE</b></td> <td><b>AMOUNT</b></td> </tr> <tr> <td>Prefix _____ Suffix _____</td> <td></td> </tr> </table>		<b>TYPE</b>	<b>AMOUNT</b>	Prefix _____ Suffix _____															
<b>TYPE</b>	<b>AMOUNT</b>																				
Prefix _____ Suffix _____																					
<b>PAYEE / JOINT PAYEE CERTIFICATION</b>		<b>JOINT ACCOUNT HOLDERS' CERTIFICATION (Optional)</b>																			
I certify that I am entitled to the payment identified above, and that I have read and understood the back of this form. In signing this form, I authorize my payment to be sent to the financial institution named below to be deposited to the designated account.		I certify that I have read and understood the back of this form, including the SPECIAL NOTICE TO JOINT ACCOUNT HOLDERS																			
<b>SIGNATURE</b>	<b>DATE</b>	<b>SIGNATURE</b>	<b>DATE</b>																		
<b>SIGNATURE</b>	<b>DATE</b>	<b>SIGNATURE</b>	<b>DATE</b>																		

### SECTION 2 (TO BE COMPLETED BY PAYEE OR FINANCIAL INSTITUTION)

<b>GOVERNMENT AGENCY NAME</b>	<b>GOVERNMENT AGENCY ADDRESS</b>

### SECTION 3 (TO BE COMPLETED BY FINANCIAL INSTITUTION)

<b>Name and address of financial institution</b>		<b>ROUTING NUMBER</b>		<b>CHECK DIGIT</b>											
		<table border="1"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>												<table border="1"> <tr> <td></td> </tr> </table>	
		<b>DEPOSITOR ACCOUNT TITLE</b>													
<b>FINANCIAL INSTITUTION CERTIFICATION</b>															
I confirm the identity of the above-named payee(s) and the account number and title. As representative of the above-named financial institution, I certify that the financial institution agrees to receive and deposit the payment identified above in accordance with 31 CFR Parts 240, 208, and 210.															
<b>PRINT OR TYPE REPRESENTATIVE'S NAME</b>	<b>SIGNATURE OF REPRESENTATIVE</b>	<b>TELEPHONE NUMBER</b>	<b>DATE</b>												

Financial institutions should refer to the GREEN BOOK for further instructions.

THE FINANCIAL INSTITUTION SHOULD MAIL THE COMPLETED FORM TO THE GOVERNMENT AGENCY IDENTIFIED  
GOVERNMENT AGENCY COPY

NSN 7540-01-058-0224

1189-204

Manual Release 151  
Replaces all preceding manual releases

## SAMPLE PAYMENT SCREEN

## SMARTLINK II - PMS PAYMENT REQUEST

PIN: XXXX (A)NOTHER PMT REQ (E)ND  
ACCOUNT NUMBER: XXXXX (M)ORE SUBACCTS FOR ACCT  
PAYMENT DUE DATE (YYMMDD): 910102 ENTER "A", "E" OR "M"==>E  
TOTAL AMT REQUESTED: 55165.36  
FEDERAL CASH BALANCE ON HAND: 0 +/-  
EXPECTED DISBURSEMENT AMOUNT: 55165.36

	SUB-ACCT	AMOUNT	+/-		SUB-ACCT	AMOUNT	+/-
1.	00-00515	23000.00		2.	00-00569	14000.00	
3.	00-00572	6000.12		4.	00-00693	11156.00	
5.	00-00701	6509.24		6.	00-00719	3000.00	-
7.	00-00728	2500.00	-	8.			

## MESSAGES:

YOUR REQUEST WAS RECEIVED.

## SAMPLE

## CLASSIFICATION OF AMOUNT REQUESTED

(NPS Supplement to the electronic SMARTLINK payment request system for the L&amp;WCF Program)

STATE: \_\_\_\_\_ REQUEST NO. \_\_\_\_\_ DATE: \_\_\_\_\_

GRANT NO. (including element, if applicable)	AMOUNT	GRANT NO. (including element, if applicable)	AMOUNT
	\$		\$
<b>TOTAL</b>	(must be same as total requested this date under SMARTLINK)		\$

REMARKS

-----  
Manual Release 151  
Replaces all preceding manual releases

SAMPLE

CLASSIFICATION OF AMOUNT REQUESTED

(NPS Supplement to the electronic SMARTLINK payment request system for the L&WCF Program)

STATE: Anystate REQUEST NO. 001 DATE: January 2, 1991

GRANT NO. (including element, if applicable)	AMOUNT	GRANT NO. (including element, if applicable)	AMOUNT
00-00515 (4F)	\$ 23,000.00		\$
00-00569 (1F)	14,000.00		
00-00572C (5P)	2,000.12		
00-00572E (3F)	3,000.00		
00-00572F (2F)	1,000.00		
00-00693 (1P)	11,156.00		
00-00701 (3P)	6,509.24		
00-00719 (APPL)	(3,000.00)		
00-00728 (ADJ)	(2,500.00)		
<b>TOTAL</b>	(must be same as total requested this date under SMARTLINK)		<b>\$ 55,165.36</b>

REMARKS

00-00719 Apply to advance.  
00-00728 Adjustment due to prior overdraw.



Instructions for Completion of  
Classification of Amount Requested Form

The Classification of Amount Requested form serves as a supplement to the electronic SMARTLINK payment request. A copy must also be submitted to the applicable NPS Regional Office. Failure to adhere to this requirement will result in removal from SMARTLINK and placement on direct reimbursement. Information appearing on this form is for the benefit of NPS, providing a "hard" copy detailing the recipient's payment requests for a given date.

**GENERAL INFORMATION**

All amounts shown on this form represent the Federal share of project cost. This report must be submitted to the NPS Accounting Operations Division in Reston, Virginia within 24 hours of every SMARTLINK payment request. Although each SMARTLINK payment request will accommodate up to eight grant payments per screen, there is no overall limit on the number of grants for which payment is requested per day. Use the Classification form for as many grants as are applicable for a given date. Use additional form(s) if needed.

**INSTRUCTIONS**

STATE: Enter State.

REQUEST NO. Enter the consecutive number of the request (first request = "001;" fifteenth request = "015," for example).

DATE: Enter date of SMARTLINK request (should be same date entered on SMARTLINK screen). Do not include requests generated on a different date.

In the space provided, list each project (grant) identification number applicable to the request and the amount of the request that applies to each project. Following the grant number, enter (in parentheses) the appropriate sequential payment number for the grant and "P" (for "partial") for payments which leave an outstanding balance for the applicable project. When the final payment is requested for a particular project, enter the appropriate sequential payment number and "F" (for "final") after the grant number. (Examples: the first partial payment would be "1P" while the fifth and final payment would be "5F").

If, for grants previously paid in final, adjustments in the final amount are required, enter "ADJ" in parentheses following the grant number. If adjustments on prior payments for specific grants (as a result of overpayments and payments on Bills for Collection, for example) are being accomplished, the amount must be enclosed in parentheses and an explanation must appear in the "Remarks" section. For adjustments reflecting amounts due on Bills for Collection such as those issued to recover disallowed costs, the Bill number should be noted.

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Manual Release 151

Replaces all preceding manual releases

CHAPTER 675.6  
ATTACHMENT C

L&WCF GRANTS MANUAL

If the amount requested for a given project represents an adjustment due to an overpayment on a prior drawdown or to payment on a Bill for Collection, that amount is considered a negative which, on the SMARTLINK screen, is reflected by entering a minus sign in the appropriate "+/-" space. On the Classification form, the entry should be made as described above.

The total (net) of all amounts reflected on this form must equal the total amount requested via SMARTLINK on the applicable date. The form has space for itemizing up to 32 grants. For consolidated grants, itemize by element and include element letter with the grant number.

The Remarks section may be used for any appropriate comments which clarify the request. All adjustments, such as refunds of prior overpayments and payments on Bills for Collection issued for audit recoveries or other reasons, must be explained here (cite specific grant numbers which show amounts appearing in parentheses).

REQUEST FOR ADVANCE OR REIMBURSEMENT		Approved by Office of Management and Budget, No. 80-RO183		PAGE    OF PAGES
(See Instructions on back)		<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <b>1. TYPE OF PAYMENT REQUESTED</b>  <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="width: 45%;"> <b>a. "X" one, or both boxes</b>  <input type="checkbox"/> ADVANCE    <input type="checkbox"/> REIMBURSE- MENT               </div> <div style="width: 45%;"> <b>2. BASIS OF REQUEST</b>  <input type="checkbox"/> CASH   <input type="checkbox"/> ACCRUAL               </div> </div> <div style="margin-top: 5px;"> <b>b. "X" the applicable box</b>  <input type="checkbox"/> FINAL    <input type="checkbox"/> PARTIAL               </div> </div> </div>		
<b>3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED</b>		<b>4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY</b>		
<b>5. EMPLOYER IDENTIFICATION NUMBER</b>		<b>6. PERIOD COVERED BY THIS REQUEST</b> FROM (month, day, year)    TO (month, day, year)		
<b>7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER</b>		<b>5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST</b>		
<b>8. RECIPIENT ORGANIZATION</b>  Name : _____  Number and Street : _____  City, State and ZIP Code : _____		<b>10. PAYEE (Where check is to be sent is different than item 8)</b>  Name : _____  Number and Street : _____  City, State and ZIP Code : _____		
<b>11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS / ADVANCES REQUESTED</b>				
PROGRAMS / FUNCTIONS / ACTIVITIES ►	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (As of date)	\$	\$	\$	\$
b. Less: Cumulative program income				
c. Net program outlays (Line a minus line b)				
d. Estimated net cash outlays for advance period				
e. Total (Sum of lines c & d)				
f. Non - Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (Line g minus line h)				
j. Advances required by month, when requested by Federal grantor agency for use in making pre-scheduled advances	1st month			
	2nd month			
	3rd month			
<b>12. ALTERNATE COMPUTATION FOR ADVANCES ONLY</b>				
a. Estimated Federal cash outlays that will be made during period covered by the advance				
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period				
c. Amount requested (line a minus line b)				
<b>13. CERTIFICATION</b>				
I certify that to the best of my knowledge and belief the data above are correct; that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has been previously requested.			SIGNATURE OF AUTHORIZED CERTIFYING OFF   TYPED OR PRINTED NAME AND TITLE	
			DATE REQUEST SUBMITTED   TELEPHONE (AR CODE, NUMBER, EXTENSION)	

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

<i>Item</i>	<i>Entry</i>	<i>Item</i>	<i>Entry</i>
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.		use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.	11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (not of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
6	enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal Agency.	11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.	11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.	13	Complete the certification before submitting this request.
Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.			
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed,		

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS ( See instructions on back )		Approved by Office of Management and Budget, No. 80-RO181		Page    of    Pages
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED		1. TYPE OF REQUEST <input type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL		2. BASIS OF REQUEST <input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL
4. EMPLOYER IDENTIFIER NUMBER		6. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO.
7. RECIPIENT ACCOUNT OR OTHER IDENTIFYING NUMBER		PERIOD COVERED BY THIS REPORT FROM (Month, day, year)    TO (Month, day, year)		
8. RECIPIENT ORGANIZATION  Name :  A/c. and Street :  City, State and ZIP Code :		10. PAYEE ( Where check should be sent if different from item 8 )  Name :  A/c. and Street :  City, State and ZIP Code :		
11. STATUS OF FUNDS				
CLASSIFICATION	(a) PROGRAM	(b) FUNCTIONS	(c) ACTIVITIES	TOTAL
a. Administrative expense	\$	\$	\$	\$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date (sum of lines a thru m)				
o. Deductions for program income				
p. Net cumulative to date (line n minus line o)				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share (sum of lines q and r)				
t. Federal payments previously requested				
u. Amount requested for reimbursement	\$	\$	\$	\$
v. Percentage of physical completion of project	%	%	%	%
12. CERTIFICATION  I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT  SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL  TYPED OR PRINTED NAME AND TITLE		DATE REPORT SUBMITTED  TELEPHONE ( Area code, number and extension )
b. Representative certifying to line 11v.		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL  TYPED OR PRINTED NAME AND TITLE		DATE SIGNED  TELEPHONE ( Area code, number and extension )

175-101 EXHIBIT 4

STANDARD FORM 175 (7-76)  
Prescribed by Office of Management and Budget  
CIRCULARS NO. A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 3, 4, 5, 8, 9, 10, 11s, and 11v are self explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
1.	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project	11j.	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account, thereby reflecting net amounts if required by the Federal agency.
2.	Show whether amounts are computed on an accrued expenditure basis	11k.	Enter those amounts associated with the actual construction or, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
6.	Enter the employer identification number assigned by the U.S. Internal Revenue Service (or FICE (institution) code if requested by the Federal agency).	11l.	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
7.	This space is reserved for an account number or other identifying number that may be assigned by the recipient.	11m.	Enter the amounts for all items not specifically mentioned above.
11.	The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.	11n.	Enter the total cumulative amount to date which should be the sum of lines a through m.
11a.	Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	11o.	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11b.	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction	11p.	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11c.	Enter all amounts directly associated with the acquisition of land, existing structures, and related right-of-way.	11q.	Enter the Federal share of the amount shown on line p.
11d.	Enter basic fees for services of architectural engineers.	11r.	Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11e.	Enter other architectural engineering services. Do not include any amounts shown on line d.	11t.	Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement.
11f.	Enter inspection and audit fees of construction and related programs.	11u.	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
11g.	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k.	12a.	To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
11h.	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line a.	12b.	To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement.
11i.	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.		

FEDERAL CASH TRANSACTIONS REPORT		Approved by the Office of Management and Budget, No. 80 - HO182		
(SEE INSTRUCTIONS ON THE BACK. IF REPORT IS FOR MORE THAN ONE GRANT OR ASSISTANCE AGREEMENT, ATTACH COMPLETED STANDARD FORM 272-A.)		1. Federal sponsoring agency and organizational element to which this report is submitted		
<b>2. RECIPIENT ORGANIZATION</b>  Name _____  Number and Street _____  City, State and ZIP Code: _____		4. Federal grant or other identification number	5. Recipient's account number or identifying number	
		6. Letter of credit number	7. Last payment voucher number	
		Give total number for this period		
		8. Payment Vouchers credited to your account	9. Treasury checks received (whether or not deposited)	
<b>3. FEDERAL EMPLOYER IDENTIFICATION NO.</b> <span style="float: right;">▶</span>		10. PERIOD COVERED BY THIS REPORT		
		FROM (month, day, year)	TO (month, day, year)	
<b>11. STATUS OF FEDERAL CASH</b>  (See specific instructions on the back)	a. Cash on hand beginning of reporting period		\$	
	b. Letter of credit withdrawals			
	c. Treasury check payments			
	d. Total receipts (Sum of lines b and c)			
	e. Total cash available (Sum of lines a and d)			
	f. Gross disbursements			
	g. Federal share of program income			
	h. Net disbursements (Line f minus line g)			
	i. Adjustments of prior periods			
	j. Cash on hand end of period		\$	
<b>12. THE AMOUNT SHOWN ON LINE 11, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING</b> <div style="text-align: right; font-size: x-small;">DAYS</div>	<b>13. OTHER INFORMATION</b>			
	a. Interest income		\$	
	b. Advances to subgrantees or subcontractors		\$	
14. REMARKS (Attach additional sheets of plain paper, if more space is required)				
<b>15. CERTIFICATION</b>				
I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement.	AUTHORIZED  CERTIFYING  OFFICIAL	SIGNATURE		DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE		
		<div style="display: flex; justify-content: space-between;"> <span>(Area Code)</span> <span>(Number)</span> <span>(Extension)</span> </div>		
		TELEPHONE		
THIS SPACE FOR AGENCY USE				

CHAPTER 675.6  
ATTACHMENT F

L&WCF GRANTS MANUAL

<b>FEDERAL CASH TRANSACTIONS REPORT CONTINUATION</b> <i>( This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement .)</i>		Approved by Office of Management and Budget, No. 80 - B0182	
<b>2. RECIPIENT ORGANIZATION</b> ( Give name only as shown in item 2, SF 272 )		<b>1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED</b>	
FROM ( Month, day, year )		<b>3. PERIOD COVERED BY THIS REPORT</b> ( As shown on SF 272 ) TO ( Month, day, year )	
4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.			
FEDERAL GRANT OR OTHER IDENTIFICATION <i>( Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency )</i> (a)	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER (b)	FEDERAL SHARE OF NET DISBURSEMENTS	
		NET DISBURSEMENTS Gross disbursements less program income received ) FOR REPORTING PERIOD (c)	CUMULATIVE NET DISBURSEMENTS (d)
<b>5. TOTALS</b> ( Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences. )		\$	\$

272 - 301

STANDARD FORM 272 - A (7 - 76)  
Prescribed by Office of Management and Budget

Manual Release 151  
Replaces all preceding manual releases



AUDITS

1. **Purpose.** This Chapter establishes audit requirements in accord with the Single Audit Act of 1984 (P.L. 98-502), and OMB Circular A-128, "Audit Requirements for State and Local Governments". These requirements have been incorporated as a final rule into Department regulations, Chapter 43 CFR Part 12 "Administrative Requirements for Cost Principles for Assistance Programs", Subpart B - "Audit Requirements for State and Local Governments", effective July 18, 1985. The Single Audit Act requires the following:

- (a) State or local governments that receive \$100,000 or more a year in Federal financial assistance shall have an audit made for that year.
- (b) State or local governments that receive between \$25,000 and \$100,000 a year have an audit made for that year, or in accordance with Federal laws and regulations governing the programs they participate in.
- (c) State or local governments that receive less than \$25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.
- (d) Nothing exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102.

The Act also provides requirements for 1) conducting entitywide audits under cognizant Federal agencies, 2) determining criteria for making charges to Federal programs for the cost of audits, and 3) providing procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits. Such audits are to determine whether:

- a. financial operations are conducted properly,
- b. financial statements are presented fairly,
- c. the organization has complied with laws and regulations affecting the expenditure of Federal funds,
- d. internal procedures have been established to meet the objectives of Federally assisted programs, and

- e. financial reports contain accurate and reliable information.

## 2. Responsibilities.

A. State. The State shall use their own procedures to arrange for independent audits and to prescribe the scope of audits provided that the audits comply with the requirements set forth in this chapter and are in accord with the procurement standards prescribed OMB Circular A-102, "Uniform requirements for grants to State and local governments." (See Common Rule, 675.3, Attachment A.) The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g. audit services) these statutes will take precedence. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A-128 as incorporated into 43 CFR Part 12 Subpart B. All audit materials shall be available for review by the cognizant Federal agency or authorized representatives thereof having Federal audit responsibilities. All records essential to Federal audit purposes shall be retained by the State or local project sponsor for 3 years after final payment on the project by the Federal Government. The material shall be maintained beyond the required 3 year period if audit findings have not been resolved. The costs of providing such audits may be reimbursed to the State or project sponsor through its indirect cost rate.

B. Federal. Federal agencies are responsible for determining that Federal funds have been applied effectively and in a manner consistent with Federal laws, program objectives, and project agreements. The Single Audit Act provides that an audit made in accordance with the rule (43 CFR Part 12 Subpart B) shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

## 3. Standards.

- A. Procedures. Audits shall be made in accord with the General Accounting Office's *"Standards for Audit of Government Organizations, Programs, Activities and Functions"* and the *"Compliance Supplement for Single Audits of State and Local Governments"* any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants. Audits usually will be made annually, but not less frequently than every two years.
- B. Scope. Audits will include, at a minimum, an examination of the systems of internal control, the systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations.

Examinations shall be made to determine whether:

- (1) There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.
- (2) The financial statements are presented fairly in accordance with generally accepted accounting principles.
- (3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A-102. (See 675.3, Attachment A.)
- (4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.
- (5) Charges made:
  - (a) Are necessary and reasonable for the proper administration of the program,
  - (b) Conform to any limitations or exclusions in the award,
  - (c) Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient,
  - (d) Were net of applicable credits,

- (e) Did not include costs properly chargeable to other federally assisted programs,
- (f) Were properly recorded (i.e. correct amount, date) and supported by source documentation,
- (g) Were approved in advance, if subject to prior approval in accordance with OMB Circular A-87, "Cost principles for State and local governments",
- (h) Were incurred in accordance with competitive purchasing procedures, if covered by of OMB Circular A-102, and
- (i) Were allocated equitably to benefiting activities, including non-Federal activities.

C. Reports. The audit report shall include:

- (1) Financial statements, including footnotes, of the recipient organization.
- (2) The auditors' comments on the financial statements which should:
  - (a) Identify the statements examined, and the period covered,
  - (b) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.
  - (c) State that the audit was done in accordance with the standards in Section 675.7.3A, and
  - (d) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.
- (3) The auditors' comments on compliance and internal control which should:
  - (a) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses,
  - (b) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those

provisions of Federal law or regulations that could have a material effect on the financial statements and reports, and

- (c) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.
  - (4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.
4. **Exceptions.** An audit exception is a determination by an appropriate authority that an item questioned by the auditor is not properly chargeable to the project agreement and should be disallowed. The Regional Director determines the allowance or disallowance of items questioned by the auditor. Each Regional Director will be responsible for the review of audit reports received from cognizant Federal agencies and/or the Office of the Inspector General (OIG) Department of the Interior pertaining to Land and Water Conservation Fund grants to States in their assigned Regions. Each Regional Director will be responsible for advising the States of the audit findings, together with recommendations and suggestions for overcoming the deficiencies disclosed by the audit, and also advise the State of the disallowance of any items.

The Departmental Manual [360 and 361 (June 1, 1984) DM 7.3] requires that the State formally respond to the OIG, through the Director of NPS, concerning audit exceptions within 90 days of the issuance of the audit report. It is hoped that this response will resolve most or all of the audit exceptions. At the least, this initial response should include:

- 1) Whether there is agreement with the audit findings and recommendations. If there is non-concurrence, the specific reasons must be stated.
- 2) Recommendations or support documentation for corrective action (resolution) of the audit exceptions.

All audit exceptions must be fully resolved within six (6) months of the issuance of the audit report. If resolution of an audit exception indicates the need for reimbursement of the Federal share, then such reimbursement must be made within 60 days after such resolution. After the six (6) month period from the date of issuance of the audit report, unresolved audit exceptions will be disallowed and reimbursement of the Federal share must be made within sixty (60) days. Reimbursement of the Federal share may be accomplished by a credit of payment to billings and letter of credit drawdowns.

**PROJECT TERMINATION AND SETTLEMENT**

1. This chapter prescribes project closeout procedures in accordance with 43 CFR Part 12.1-52.
2. **Termination.** The termination of a project means the cancellation of Federal assistance, in whole or in part, under a project at any time prior to the date of completion.
3. **Suspension.** The suspension of a grant is an action by the Service which temporarily suspends Federal assistance under the project pending corrective action by the project sponsor or pending a decision to terminate the grant by the Service.
4. **Termination by State.** The State may unilaterally terminate the project or consolidated project element at any time prior to the first payment on the project or consolidated project element. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement of the State and the Service.
5. **Termination for Cause.** The Director may terminate any project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
6. **Termination for Convenience.** The Service or State may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The project sponsor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Service may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the project sponsor prior to termination. An amendment to the project agreement is required for all terminations for convenience.
7. **Grant Closeout.** The closeout of a grant is the process by which the Service determines that all applicable administrative actions and all required work of the project or project element have been completed.

8. **Date of Completion.** The date of completion is the date when all work under a project is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends, whichever comes first.
9. **Closeout procedures.** The following are minimum requirements of the Service's grant closeout procedures:
  - A. Upon request, the Service will make prompt payments to the State for allowable reimbursable costs under the project being closed out.
  - B. The State shall immediately refund to the Service any unencumbered balance of cash advanced to the State.
  - C. The State shall provide the Service within 90 days after the date of completion of the project or element all financial performance and other reports required as a condition of the grant. The Service may grant extensions when requested by the State.
  - D. Within 90 days after the date of completing the project or consolidated project element, a final performance report is due which specifies that a project has been completed in accordance with the approved project agreement. In addition, the following reports are due within the 90 days:
    - (1) A final on-site inspection report in accordance with the on-site inspection agreement.
    - (2) A completed Description and Notification Form (DNF). This will not be needed for projects or elements of a consolidated grant which already have a DNF on file unless changes have occurred. (see Attachment 660.3E).
    - (3) An as-built or as-acquired site plan unless previously submitted.
    - (4) A list of facilities developed and/or acres acquired.
    - (5) A signed and dated project boundary map if a more accurate map than the current one on file is available. (see Section 660.2.6).
  - E. The Service shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received. The project agreement, as signed by the State and the Service, establishes a total cost and support ceiling for the project that is based upon the project sponsor's best estimate of acquisition and development costs as foreseen at the outset of the project. As

the project proceeds, adjustments are sometimes required in accord with changing processes, unforeseen problems or other conditions. When an upward adjustment is required, an amendment must be executed (see Section 660.2.9). When actual project costs are less than originally estimated, no amendment is necessary.

F. Upon receipt of the reports and final project billings, a determination will be made as to the total sum of:

- (1) any amount not otherwise accounted for;
- (2) any credits for materials, supplies or equipment on hand; and
- (3) any payments or funds to be refunded by the State.

Such total sum will be balanced against any amount owed to the State. In the event the total sum exceeds the amount owed to the State, the excess will constitute a debt owed by the State to the United States and shall be recovered from the State or its assignees in a manner which the Director shall prescribe. If the amount owed to the State is greater than the total sum, the balance will be paid to the State.

G. The project sponsor shall account for any personal property acquired with grant funds or received from the Government in accordance with the provisions of 43 CFR Part 12.1 - .52. The project sponsor shall account for all real property acquired or developed with grant funds in accordance with the statutory requirements of the Land and Water Conservation Fund Act of 1965, as amended.

H. In the event a final audit has not been performed prior to the closeout of the grant, the Service retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.



POST-COMPLETION RESPONSIBILITIES

1. Operation and Maintenance. Property acquired or developed with L&WCF assistance shall be operated and maintained as follows:
  - A. The property shall be maintained so as to appear attractive and inviting to the public.
  - B. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards.
  - C. Properties shall be kept reasonably safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.
  - D. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
  - E. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
2. Availability to Users.
  - A. Discrimination on the Basis of Race, Color, National Origin, Religion, or Sex. Under Title VI of the 1964 Civil Rights Act property acquired or developed with L&WCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are otherwise eligible. The code of Federal Regulations, Title 43, Part 17, effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from Federal assistance and to any other recreation areas administered by the State agency or local agency receiving the assistance. (see Chapter 650.9) Discrimination is also prohibited on the basis of religion or sex.
  - B. Discrimination on the Basis of Residence. Section 6(f)(8) of the L&WCF Act and 36 CFR 59.4 provide that with respect to property acquired or developed with L&WCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

Fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged

to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable State or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents.

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements.

- C. Discrimination on the Basis of Handicap. Section 504 of the Rehabilitation Act of 1973 requires that no qualified person shall on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Americans with Disabilities Act of 1990 (P.L. 100-336) simply references and reinforces these requirements for Federally-assisted programs.
  - D. Reasonable Use Limitations. Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments.
3. Conversion. Property acquired or developed with L&WCF assistance shall be retained and used for public outdoor recreation. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of the NPS Regional Director pursuant to Section 6(f)(3) of the L&WCF Act and 36 CFR Part 59. The Director has authority to disapprove conversion requests and/or to reject proposed property substitutions.

The conversion provisions of Section 6(f)(3), 36 CFR Part 59, and this Manual apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State. Responsibility for compliance and enforcement of these provisions rests with the State for both State and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this mutually agreed to area exceeds that

actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity.

A. Conversion applicability. Conversions generally occur in the following four situations:

- (1) Property interests are conveyed for non-public outdoor recreation uses.
- (2) Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof.
- (3) Non-eligible indoor recreation facilities are developed within the project area without NPS approval.
- (4) Public outdoor recreation use of property acquired or developed with L&WCF assistance is terminated.
- (5) Exceptions.
  - (a) Underground utility easements that do not have significant impacts upon the recreational utility of the park will not constitute a conversion.
  - (b) Proposals to construct public facilities or to shelter or enclose Fund assisted or non-assisted outdoor recreation facilities without L&WCF assistance, where it can be shown that there is a gain or increased benefit to public recreational opportunity, will not constitute a conversion. Final review and approval of such cases shall be made on a case by case basis by the responsible NPS office and in accordance with Section 640.3.9 and 675.9.3D-E.

B. Prerequisites to Consideration of Conversions. Requests from the project sponsor for permission to convert L&WCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to the appropriate NPS Regional director in writing. NPS will consider conversion requests if the following prerequisites have been met:

- (1) All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- (2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a State approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures

or facilities that will not directly enhance its outdoor recreation utility.

Generally, this will necessitate a review of appraisals prepared in accord with Chapter 675.2 for both the property proposed to be converted and that recommended for substitution. However, at the discretion of the Regional Director, a State certification that appraisals of both properties are acceptable and reveal that the replacement property is of at least equal fair market value as that of the property to be converted can be accepted. Exercising this authority should be consistent with the State's review responsibilities with respect to donation appraisals. (see 675.2.6E).

- (3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:
  - (a) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property.

In accordance with Section 6(f)(3) of the L&WCF Act as amended by Section 303 of the Emergency Wetlands Resources Act of 1986, wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion

regardless of the nature of the property proposed for conversion.

- (b) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation need. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area at another location within the jurisdiction.
  - (c) Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these requirements and for the substitution of replacement property.
  - (d) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.
- (4) The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition (see Part 640.2.1). The replacement property must constitute or be part of a viable recreation area. Unless *each* of the following additional conditions (also see 670.3.4K) are met, land currently owned by another public agency may not be used as replacement land for land acquired as part of an L&WCF project:
- (a) The replacement land was not originally acquired by the sponsor or selling agency for recreation.
  - (b) The replacement land has not previously been dedicated or managed for recreational purposes while in public ownership.
  - (c) No Federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance as described in 670.1.5.

- (d) Where the project sponsor acquires replacement land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

An exception may be made to condition (4)(d) only in the case of **development projects** for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself. In this case, public land that has not been previously dedicated or managed for recreation/conservation use may be used as replacement land even if this land is currently owned by the project sponsor or is transferred from one public agency to another without cost. Because of the L&WCF Act's emphasis on preventing any subtractions to the **net acreage added to the national recreation estate by grants under the program**, this exception can never be applied to L&WCF acquisition projects, nor to combination projects where the costs of development were matched through the value of land donated or otherwise brought under the protection of Sec. 6(f)(3) for the purpose of development.

- (5) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.
- (6) All necessary coordination with other Federal agencies has been satisfactorily accomplished.
- (7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action (see Chapter 650.2). In cases where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the Region is assured that all environmental review requirements related to that other action have been met.
- (8) Intergovernmental Review System (E.O. 12372) review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project. (see Chapter 650.8).

- (9) The proposed conversion and substitution are in accord with the SCORP.
- (10) Staff consideration of the above points reveals no reason for disapproval and the project files are so documented.
- (11) It should also be noted that the acquisition of one parcel of land may be used in satisfaction of several approved conversions. However, previously acquired property can not be used to satisfy substitution requirements except in the case of development projects in 675.9.3B(4) noted above.
- (12) The restrictive leasing policy (640.3.4) does not relieve the sponsor of an existing project for the acquisition and/or development of a leasehold interest from fulfilling the conversion requirements of Section 6(f)(3) of the Act, including the provision of replacement land in the event a conversion is proposed or takes place during the term of the lease. In this instance, the conversion of the original lease can be replaced with a leasehold interest for a period of time which is not less than the time remaining on the original lease, and which fulfills the recreation commitment agreed to in the original lease agreement.

Generally, for existing projects which involve leases, the responsibility for retaining the property in recreation terminates at the end of the lease period. However, those lease agreements containing a renewal clause which can be exercised by the lessee must be reviewed to determine if and when the Service's compliance responsibility ceases.

- C. Amendments for Conversion. All conversions require amendments to the original project agreement. Therefore, amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out with NPS. Signed and dated section 6(f)(3) project boundary maps (see section 660.2.6) shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the State's request for the conversion. It is, however, the Service's policy to avoid such situations if at all possible and to agree only if warranted by exceptional circumstances. In such cases, an express commitment to satisfy Section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion

approval, must be received from the State. This will be in the form of an amendment to the project agreement.

D. Prerequisites to and criteria for consideration of project amendments for the construction of public facilities on L&WCF assisted sites. The Service will only consider requests to construct sponsor-funded public facilities if the following prerequisites and criteria have been met:

- (1) All design and location alternatives have been adequately considered, documented and rejected on a sound basis.
- (2) The proposal has been adequately reviewed at the State level and has been recommended by the SLO.
- (3) Use of the facility will be compatible with outdoor recreation and will increase outdoor recreation use; and, recreation use remains the overall primary function of the site.
- (4) The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool, which virtually occupies the entire site. Examples of uses which would not ordinarily be approved include, but are not limited to, community recreation center which takes up all or most of a small park site, police stations, fire stations, professional sports facilities or commercial resort or other facilities which 1) are not accessible to the general public, or 2) require memberships, or 3) which, because of high user fees, have the effect of excluding elements of the public, or 4) which include office, residential or elaborate lodging facilities.
- (5) Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented and a net recreation benefit must result.
- (6) The proposed facility must be under the control and tenure of the public agency which sponsors and administers the original park area.
- (7) The proposal has been subjected to specific public review; public comment providing evidence of public support must accompany the proposal.



- (8) All applicable Federal requirements for approval and operations are met in accordance with Section 650.1.

E. Procedures for Approval of Construction of a Public Facility or the Sheltering of an Existing Facility. Considerations of proposals for the construction of State or locally funded public facilities on a Fund-assisted site or the sheltering of recreation activities, without Federal funds, on a Fund-assisted site are subject to the following process:

- (1) The project sponsor, following public review, shall submit the proposal to the SLO for review.
- (2) The SLO, upon affirmative completion of the review, will submit the proposal in the form of a project amendment to the appropriate NPS Regional Office along with all supporting documentation and recommendations.
- (3) The Regional Office will review the proposal and forward the proposal along with its recommendation to NPS WASO for final action.

(See also Section 640.3.9.C for sheltering requirements.)

4. Obsolete Facilities, Changes of Use. Project sponsors are not required to continue operation of a particular recreation area or facility beyond its useful life. However, Section 6(f)(3) of the L&WCF Act requires that project sponsors maintain the entire area defined in the project agreement in some form of public outdoor recreation use. NPS approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans for the area. NPS approval is not necessarily required however, for each and every facility use change. A project area should be viewed in the context of overall use and should be monitored in this context. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, for example, require NPS approval. NPS approval must also be obtained for any underground utility installations for which an exception to conversion is requested under Part 675.9.3.A5.)

- A. Notification of Obsolescence. To assure that facility changes (including granting of underground utility easements when they have no above ground impacts) do not significantly contravene the original project agreement, the NPS Regional Director shall be notified in writing by the State of all proposed changes in advance

of their occurrence. NPS will then expedite a determination of whether a formal review and approval process will be required. A primary NPS consideration in the review of requests for changes in use will be the consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan. Changes to other than public outdoor recreation use require NPS approval and the substitution of replacement land in accordance with Section 6(f)(3) of the L&WCF Act, 36 CFR Part 59, and Chapter 675.9.3 of this manual.

B. Determination That a Facility is Obsolete. Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:

- (1) reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating;
- (2) changing recreation needs dictate a change in the type of facilities provided;
- (3) park operating practices dictate a change in the type of facilities required; or
- (4) the recreation area or facility is destroyed by fire, natural disaster, or vandalism.

C. State Responsibilities. Project sponsors may permit the use of a facility to be discontinued or allow a particular type of recreation use of the L&WCF assisted area to be changed provided that the project record maintained by the State is documented by the sponsor with a justification statement that the State concurs in the change, and that the procedures required in 675.9.4A above are adhered to. If in the judgement of the State, the facility is needed and was lost through neglect or inadequate maintenance, then replacement facilities must be provided at the current value of the original investment.

D. Additional L&WCF Assistance. L&WCF assistance may be provided to renovate outdoor recreation facilities which have previously received L&WCF assistance if the State determines that the renovation is not required as a result of neglect or inadequate maintenance and the State documents the project record to that effect.

5. Post-Completion Inspections. In order to determine whether properties acquired or developed with L&WCF assistance are being retained and used for outdoor recreation purposes in accordance with the project agreement and other applicable program requirements, a State

compliance inspection is to be made within five years after final billing and at least once every five years thereafter.

The following points should be taken into consideration during the inspection of properties that have been developed for public use:

- A. Retention and Use. Is the property being used for the purposes intended?
  - B. Appearance. Is the property attractive and inviting to the public?
  - C. Maintenance. Is upkeep and repair of structures and improvements adequate? Is there evidence of poor workmanship or use of inferior quality materials or construction? Is vandalism a problem?
  - D. Management. Does staffing and servicing of facilities appear adequate?
  - E. Availability. Is there evidence of discrimination? Is the property readily accessible and open to the public during reasonable hours and times of the year?
  - F. Environment. Is the quality of the area being maintained?
  - G. Signing. Is the area properly signed to allow for user information and safety, and proper acknowledgement of the Land and Water
  - H. Interim Use. Where lands have been acquired but not yet developed, the inspection should determine whether the interim use being made of the property, if any, is as agreed to by the Service.
6. **Post-Completion Inspection Reports**. Within 90 days of completion of an on-site inspection, States shall submit to the appropriate Regional Office a post-completion inspection report for all projects which have compliance problems. The report should include the date of inspection, description of discrepancy, and corrective actions taken or to be taken. (see Section 675.1.6)

A performance report shall be provided on an annual basis where no compliance issues have been identified. This report will be due by March 31 of each year and will include identification of the projects inspected by project name and number and the date the on-site inspection occurred. (see Sections 675.5.5 and 675.1.6).

Post-completion inspection reports shall also be completed for those projects in which the facilities have been deemed obsolete. The report should include certification by the State Liaison Officer that the facility is obsolete and that such obsolescence is not a result of neglect or inadequate maintenance on the part of the project sponsor. (see Section 675.9.4).

7. **Applicability.** The rules given in this chapter apply to each area or facility for which L&WCF assistance is obtained, regardless of the extent of L&WCF assistance in that area or facility. That is, in cases where assistance is provided only for an acquisition, the entire park or recreational area involved, including developments on the lands so acquired, are subject to the provisions of this chapter. Where development assistance is given, the lands of the park or recreation area identified on the project boundary map are subject to this chapter.
8. **State Responsibility.** Responsibility for enforcement of the provisions of this chapter rests with the State. The Service will inspect L&WCF assisted areas and facilities from time to time, but it shall conduct such visits in concert or through consultation with the State Agency or State Liaison Officer.
9. **Costs.** The costs of making post-completion inspections by the State are allowable overhead costs for L&WCF assistance.
10. **Penalties.** Failure to comply with the provisions of this chapter shall be considered cause for the Director, at his/her election, to:
  - A. Withhold future payments being made to the State on current projects of the project sponsor who is responsible for the infraction in question; or
  - B. Withhold future payments to the State on any or all current projects until the situation involved is corrected; or
  - C. Withhold action on all pending projects of the State and/or project sponsor who is responsible for the infraction in question; or
  - D. Withhold current or future reimbursements due to the State in the amount of assistance previously paid out for the project or projects involved.
11. **Service Inspection.** Properties acquired or developed with L&WCF assistance shall be available for inspection by the Director or other NPS representative.